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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ROSEMARIE MEZA, Plaintiff and Appellant, v. AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA, Defendant and Respondent.	B264348 (Los Angeles County Super. Ct. No. BC499590)

APPEAL from judgment of the Superior Court of Los Angeles County, Michael M. Johnson, Judge. Affirmed.

Gleason & Favarote, Paul M. Gleason, Brandyn E. Stedfield and Rina J. Restaino for Plaintiff and Appellant.

Manuel Dominguez for Defendant and Respondent.

Plaintiff and appellant Rosemarie Meza (Meza) contends that the trial court erred by affirming a final arbitration award which denied all of Meza's claims against her former employer, the Automobile Club of Southern California (the Automobile Club). Meza contends that the final arbitration award was "null and void" because it was untimely. According to Meza, the arbitrator exceeded his authority by purportedly issuing the final award months after the deadline by which it was to have been issued pursuant to the parties' arbitration agreement. We disagree and, accordingly, affirm the judgment.

BACKGROUND

I. The arbitration

A. The agreement to arbitrate

In 2003, Meza began working for the Automobile Club as an insurance service representative. In connection with her employment with the Automobile Club, Meza voluntarily entered into a mutual agreement to arbitrate any and all "differences" that may arise between her and the Automobile Club (the Arbitration Agreement). The parties agreed that the Federal Arbitration Act (FAA) (9 U.S.C. §§ 1–16) "shall govern the interpretation, enforcement and all proceedings pursuant to this Agreement." The Arbitration Agreement does not contain any reference to the California Arbitration Act (CAA) (Code Civ. Proc., §§ 1280–1294.2).

The Arbitration Agreement provided, inter alia, that any arbitration would be held under "the auspices of a sponsoring organization, either the American Arbitration Association . . . or Judicial Arbitration & Mediation Services" and would be conducted pursuant to "the sponsoring organization's then-current employment arbitration rules/procedures." With regard to the timing of an award, the Arbitration Agreement provided that the arbitrator "shall render an award and written opinion . . . no later than thirty (30) days from the date the arbitration hearing concludes or the post-hearing briefs . . . are received, whichever is later." The parties also agreed that any arbitration "shall be final and binding" upon them.

The Arbitration Agreement was silent with regard to any potential conflict between its provisions regarding the conduct of the arbitration, such as the due date for an award, and the rules of the sponsoring organization. However, the Arbitration Agreement did provide that the arbitrator "shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation" of the Arbitration Agreement.

B. Meza's lawsuit

In July 2012, the Automobile Club terminated Meza's employment. In January 2013, Meza, believing her dismissal was improper, filed suit against the Automobile Club, alleging, inter alia, disability discrimination, unlawful retaliation, wrongful termination, and intentional infliction of emotional distress. The court stayed the action, while the parties, pursuant to the Arbitration Agreement, proceeded to arbitrate all claims arising out of Meza's lawsuit.

C. The rules governing the conduct of the arbitration

The parties elected to conduct the arbitration under the auspices of Judicial Arbitration & Mediation Services (JAMS). JAMS's then current employment arbitration rules and procedures (the Rules) granted wide powers to the arbitrator. Among other things, the Rules provided that the arbitrator "may grant any remedy or relief that is just and equitable and within the scope of the Parties' agreement" and "shall resolve disputes about the interpretation and applicability of these Rules and conduct of the Arbitration Hearing. The resolution of the issue by the Arbitrator shall be final." Moreover, "[j]urisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which the Arbitration is sought . . . shall be submitted to and ruled on by the Arbitrator."

The Rules further provided that the arbitrator "may, upon a showing of good cause or *sua sponte*, when necessary to facilitate the Arbitration, extend any deadline established in these Rules, provided that the time for rendering the Award may only be altered in accordance with Rules 22(i) or 24." Rule 22(i) provided that at "any time before the Award is rendered, the Arbitrator may, *sua sponte* or on application of a Party

for good cause shown, re-open the Hearing. If the Hearing is re-opened and the re-opening prevents the rendering of the Award within the time limits specified by these Rules, the time limits will be extended until the reopened Hearing is declared closed by the Arbitrator." Rule 24 provided that the arbitrator "shall render a Final Award or a Partial Final Award within thirty (30) calendar days after the date of the close of the Hearing" (which, according to Rule 22(h), occurs when the arbitrator "determines that all relevant and material evidence and arguments have been presented, and any interim or partial awards have been issued").

Although the Rules granted considerable discretionary power to the arbitrator, the parties were not without any recourse to object to or challenge the arbitrator's actions. However, the Rules required that any objection or challenge be done in a timely manner. For example, Rule 27 provided that if a party "becomes aware of a violation or a failure to comply with these Rules and fails promptly to object in writing, the objection will be deemed waived . . . ." Rule 27 further provided that if any party "becomes aware of information that could be the basis of a challenge for cause to the continued service of the Arbitrator, such challenge must be made promptly . . . . Failure to do so shall constitute a waiver of any objection to the continued service by the Arbitrator."

D. The parties agree to bifurcate the arbitration hearing

An evidentiary hearing was conducted on May 27-30, 2014. On May 30, after the presentation of witnesses and documents relating to the Automobile Club's purported liability on Meza's claims, the parties "agreed to bifurcate the pu[nitive] damages phase until after the arbitrator makes his initial decision." In other words, the parties agreed that the arbitrator would first issue an interim award addressing all issues except punitive damages. If necessary, the parties would then offer evidence and argument on the issue of punitive damages, before the arbitrator issued his final award.

In addition, at the evidentiary hearing's conclusion, the parties agreed to waive oral argument and provide instead posthearing "simultaneously submitted briefs" on the issues raised and evidence presented thus far to the arbitrator. Ultimately, the parties agreed that their posthearing briefs would be due on August 15, 2014. In his August 5,

2014, order memorializing the parties' stipulation with regard to the posthearing briefing schedule, the arbitrator stated that he "retains full and complete jurisdiction over all issues, controversies and disputes" until October 13, 2014. Meza did not object to the arbitrator's self-imposed date for the expiration of his jurisdiction.

II. The arbitration's aftermath

A. The arbitrator issues an interim award and then a final award

On October 12, 2014, one day before the date set by the arbitrator for the expiration of his jurisdiction, the arbitrator served the parties with a new order, setting a new date for the expiration of his jurisdiction, November 17, 2014; this new date would also serve as the deadline for the interim award. Although the arbitrator faxed his order to the parties on October 12, and received verification that the transmission was successful, Meza and her counsel apparently did not receive a copy. On October 16, 2014, Meza objected to the arbitrator's continuing jurisdiction because she had "not been served with an award" on October 13, 2014 and "as per the Arbitrator's August 5, 2014 order, the Arbitrator's jurisdiction expired on October 13, 2014." Later that same day, the arbitrator explained in an email to Meza's counsel that a "formal order continuing jurisdiction to November 17, 2014" had been issued and served on October 12. It does not appear from the record that Meza ever responded or otherwise objected to the arbitrator's continuing jurisdiction based on the timely but apparently misdirected fax communication of October 12.

On November 16, 2014, the arbitrator once more continued the deadline for the interim award to November 24, 2014. Meza did not object to this latest date set by the arbitrator.

On November 23, 2014, the arbitrator issued an interim award finding in favor of the Automobile Club on all of Meza's claims (the Interim Award). With regard to punitive damages, the Interim Award noted that in light of its other findings that issue was "moot." The Interim Award also stated that the arbitrator "retains full and complete jurisdiction over all issues, controversies and disputes until December 19, 2014 to issue a Final Award." Meza did not object to the Interim Award.

On December 16, 2014, less than 30 days after issuing the Interim Award, the arbitrator issued his final award (the Final Award). Consistent with the Interim Award, the Final Award resolved all claims in favor of the Automobile Club.

B. The trial court confirms the Final Award

On February 18, 2015, Meza petitioned the trial court to vacate the Final Award, arguing that the arbitrator had exceeded his authority by failing to issue a written award by September 14, 2014—that is, within 30 days after the parties submitted their posthearing briefs. On February 26, 2015, the Automobile Club petitioned the trial court to confirm the Final Award.

On April 14, 2015, at a hearing on both petitions, the trial court granted the Automobile Club's petition to confirm and denied Meza's petition to vacate. Although the trial court adopted Meza's assumption that the posthearing briefs submitted by the parties on August 15 were the posthearing briefs referenced in the Arbitration Agreement and, therefore, arguably triggered the 30-day deadline, the court found that "there was a clear agreement by the parties to depart from the framework of the Arbitration Agreement." The court focused, in particular, on Meza's failure to object in any way to the arbitrator's August 5, 2014 order setting an end to his jurisdiction nearly 60 days after the receipt of the posthearing briefs. The court further found that in light of the parties' agreement to go in a different direction than that spelled out in the Arbitration Agreement, the arbitrator "very reasonably" proceeded under the Rules with regard to the issuance of an interim award and then a final award.

Meza timely appealed from the resulting judgment.

DISCUSSION

I. Standard of review and guiding legal principles

We review de novo the trial court's order confirming the Final Award. (*Advanced Micro Devices, Inc. v. Intel Corp*. (1994) 9 Cal.4th 362, 376, fn. 9; *Greenspan v. LADT, LLC* (2010) 185 Cal.App.4th 1413, 1435.) That is, we review independently of the "trial court the question whether the arbitrator exceeded the authority granted him by the

parties' agreement to arbitrate." (*California Faculty Assn. v. Superior Court* (1998) 63 Cal.App.4th 935, 945.)

A. The FAA governs judicial review of the Final Award

The FAA provides the default standard for judicial review of an arbitration award when a contract does not evince a clear intent to incorporate some other standard. (*Johnson v. Gruma Corp*. (9th Cir. 2010) 614 F.3d 1062, 1066.) In *Johnson v. Gruma Corp*., the Ninth Circuit Court of Appeals held that the state standard governed judicial review of an arbitration award. The contract in that case evinced a clear intent to incorporate the state standard by specifying that the arbitration was to be "conducted and was subject to enforcement pursuant to the California Arbitration Act, or other applicable law." The language of the contract there overcame the presumptive application of the FAA standard for the motion to vacate. (*Id*. at pp. 1066–1067.) Here, in contrast, there is no language indicating an intent to incorporate the CAA. Instead, there is a clear intent to have the FAA govern not only the interpretation and enforcement of the Arbitration Agreement, but "all proceedings" pursuant to the Arbitration Agreement."[1]

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[1] The FFA is applicable for other, additional reasons as well. First, although the FAA is only applicable where the underlying contract facilitates interstate commercial transactions or directly or indirectly affects commerce between states (see *Allied–Bruce Terminix Companies, Inc. v. Dobson* (1995) 513 U.S. 265, 273–274; *Shepard v. Edward Mackay Enterprises, Inc.* (2007) 148 Cal.App.4th 1092, 1097), the parties here agreed in the Arbitration Agreement that the Automobile Club "is engaged in transactions involving interstate commerce." (*Hotels Nevada, LLC v. Bridge Banc, LLC* (2005) 130 Cal.App.4th 1431, 1434–1435 [FAA applies because parties agreed that underlying contract involves interstate commerce].)

Second, although the FAA does not apply to "contracts of employment of seamen, railroad employees or any other class of worker engaged in foreign or interstate commerce" (9 U.S.C. § 1), this exclusion is limited to workers "'actually engaged in the movement of goods and services in interstate commerce'" (*Circuit City Stores Inc. v. Adams* (2001) 532 U.S. 105, 112), such as a driver delivering packages throughout the United States. (See, e.g., *Harden v. Roadway Package Systems, Inc*. (9th Cir. 2001) 249 F.3d 1137, 1140.) Here, Meza, as an insurance service representative, was not "actually engaged" in the movement of goods and services in interstate commerce.

California courts have held that the FAA's procedural provisions apply in state court when the parties expressly adopt them. (*Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 173–174.) Here, the parties agreed that the FAA "shall govern the interpretation, enforcement *and all proceedings* pursuant to this Agreement." (Italics added.)

However, "even when the [FAA] applies, interpretation of the arbitration agreement is governed by state law principles. [Citation.] Under California law, ordinary rules of contract interpretation apply to arbitration agreements. [Citation.] . . . '"The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. [Citation.] If contractual language is clear and explicit, it governs. [Citation.]" [Citation.] "The court should attempt to give effect to the parties' intentions, in light of the usual and ordinary meaning of the contractual language and the circumstances under which the agreement was made."'" (*Hotels Nevada, LLC v. Bridge Banc, LLC, supra,* 130 Cal.App.4th at p. 1435.)

B. Judicial review of procedural questions related to the arbitration

Judicial review of an arbitration award under the FAA is strictly limited in order to prevent "unnecessary public intrusion into private arbitration procedures." (*Kyocera Corp. v. Prudential-Bache* (9th Cir. 2003) 341 F.3d 987, 998 (*Kyocera*).) The limitations on judicial review are designed to preserve due process without undermining the benefits of arbitration, by making sure arbitration is not "merely a prelude to a more cumbersome and time-consuming judicial review process." (*Ibid.*)

Under the FAA, the court must confirm an arbitration award unless it is "vacated, corrected, or modified." (9 U.S.C. § 9.) Section 10 of the FAA permits vacatur, among other things, "where the arbitrators exceeded their powers." (9 U.S.C. § 10(a)(4).) A party has "a right to arbitration according to the terms for which it contracted" (*Western Employers Ins. Co. v. Jefferies & Co.* (9th Cir. 1992) 958 F.2d 258, 261), and arbitrators exceed their powers for purposes of title 9 United States Code section 10(a)(4) when they "act outside the scope of the parties' contractual agreement." (*Michigan Mut. Ins. Co. v. Unigard Sec. Ins. Co.* (9th Cir. 1995) 44 F.3d 826, 830.)

However, an arbitrator exceeds his powers, requiring vacatur, only if the arbitrator's decision "exhibits a 'manifest disregard of the law'" or is "'completely irrational.'" (*Kyocera*, *supra*, 341 F.3d at p. 997.) Absent "manifest disregard of the law" or "complete irrationality," neither erroneous legal conclusions nor unsubstantiated factual findings provide grounds for vacating an arbitrator's ruling, even when such errors are serious. (*Ibid*.; *Biller v. Toyota Motor Corp*. (9th Cir. 2012) 668 F.3d 655, 662.)

The "completely irrational" standard generally applies in the context of an arbitrator's interpretation of a contract. A decision is "completely irrational" only when it is not derived from, or determined in light of, the language and context of the agreement between the parties and the parties' intentions. *(Biller v. Toyota Motor Corp*., *supra*, 668 F.3d at p. 665.) So long as the arbitration decision draws its essence from the parties' agreement, a court does not review whether an arbitrator's contract interpretation was correct. (*Bosack v. Soward* (9th Cir. 2009) 586 F.3d 1096, 1106.) In other words, a court has "no authority to vacate an award solely because of an alleged error in contract interpretation." (*Employers Ins. v. National Union Fire Ins.* (9th Cir. 1991) 933 F.2d 1481, 1486.) Instead, we "need only determine whether the arbitrators' interpretation was 'plausible.'" (*Ibid*.)

"As a general matter, this narrow standard of review applies to the arbitrator's interpretation of matters of procedure in the contract as well as matters of substance." (*Lagstein v. Certain Underwriters, Lloyd's, London* (9th Cir. 2010) 607 F.3d 634, 643.) "In the absence of an express agreement to the contrary, procedural questions are submitted to the arbitrator, either explicitly or implicitly, along with the merits of the dispute." (*McKesson Corp. v. Local 150 IBT* (9th Cir. 1992) 969 F.2d 831, 834.)

As the United States Supreme Court has explained, "'"procedural" questions which grow out of the dispute and bear on its final disposition' are presumptively *not* for the judge, but for an arbitrator, to decide. [Citation.] So, too, the presumption is that the arbitrator should decide 'allegation[s] of waiver, delay, or a like defense to arbitrability.' [Citation.] . . . '[I]n the absence of an agreement to the contrary, issues of substantive

arbitrability . . . are for a court to decide and issues of procedural arbitrability, i.e., whether prerequisites such as *time limits* . . . have been met, are for the arbitrators to decide.'" (*Howsam v. Dean Witter Reynolds, Inc*. (2002) 537 U.S. 79, 84–85.) The *Howsam* Court went on to state that a "time limit rule is a matter presumptively for the arbitrator, not for the judge." (*Id*. at p. 85.)

Where, as here, the relevant question is "what kind of arbitration proceeding the parties agreed to," then the question "concerns contract interpretation and arbitration procedures. Arbitrators are well situated to answer that question. Given these considerations, along with the arbitration contracts' sweeping language concerning the scope of the questions committed to arbitration, this matter of contract interpretation should be for the arbitrator, not the courts, to decide." (*Green Tree Financial Corp. v. Bazzle* (2003) 539 U.S. 444, 452–453, italics omitted.)

II. The trial court properly confirmed the Final Award

We hold that the arbitrator's interpretation of the Arbitration Agreement and the Rules with regard to the due date for the Interim and Final Awards (and his jurisdiction to issue those awards) was not "'completely irrational'" (*Kyocera, supra*, 341 F.3d at p. 997), but "'plausible.'" (*Employers Ins. v. National Union Fire Ins.*, *supra*, 933 F.2d at p. 1486.) Our holding is based on two sets of facts.

First, the record of the arbitration proceeding indicates that the arbitrator did not regard the posthearing briefs submitted by the parties on August 15, 2014, as the "posthearing briefs" referred to in the Arbitration Agreement and which trigger that agreement's 30-day deadline for an award. Under the terms of the Arbitration Agreement, posthearing briefs are those briefs filed with the arbitrator's leave at "the close of the hearing." Although the Arbitration Agreement is silent with regard to when and how the hearing is deemed to be "closed," the Rules clearly state that the hearing is considered closed when the arbitrator "determines that all relevant and material evidence and arguments have been presented, and any interim or partial awards have been issued."

Here, because the parties agreed to bifurcate the arbitration, it was not self-evident when the evidentiary hearing ended on May 30 that all relevant and material evidence

had been received by the arbitrator. If the arbitrator found against the Automobile Club on one of Meza's claims permitting the award of punitive damages, and further found that the Automobile Club was guilty of "oppression, fraud or malice" (Civ. Code, § 3294, subd. (b)), then additional evidence would be needed regarding the appropriate amount of punitive damages. Moreover, the need for additional evidence and argument on punitive damages would not and could not be known until the arbitrator issued his Interim Award. As a result, the hearing, at the earliest, would not be closed until the arbitrator issued the Interim Award on November, 23, 2014. The Interim Award did in fact close the hearing on that date, because the Interim Award, by its other findings, determined that no additional evidence was required, that all relevant and material evidence had already been presented to the arbitrator. Under the arbitrator's interpretation of the Arbitration Agreement and the Rules, he had 30 days from the close of the hearing on November 23 to issue the Final Award. The arbitrator, pursuant to his interpretation of the governing agreement and rules, timely issued his Final Award on December 16, 2014.

Second, the parties, through their Arbitration Agreement and adoption of the Rules, granted the arbitrator broad discretionary power with regard to the interpretation of those documents and the conduct of the arbitration. Among other things, the Arbitration Agreement provided the arbitrator with the "*exclusive* authority to resolve *any* dispute relating to the *interpretation*, applicability, enforceability or formation" of the Arbitration Agreement. Similarly, the Rules gave the arbitrator the power to "resolve disputes about the interpretation and applicability" of the Rules and conduct of the Arbitration Hearing and that the arbitrator's resolution on such matters would be "final." In addition, "[j]urisdictional and arbitrability disputes, including disputes over the formation, existence, validity, *interpretation or scope* of the agreement under which the Arbitration is sought" were given to the arbitrator to rule upon. (Italics added.)

In light of the language of the Arbitration Agreement and the Rules, and given the wide-ranging grant of authority to interpret that language, we hold that the arbitrator's interpretation of the Arbitration Agreement and the Rules was not irrational at all. In

fact, it was more than plausible; it was both well-reasoned and reasonable. Accordingly, we affirm the trial court's decision to confirm the Final Award.

As for Meza's objection on October 16, 2014 to the arbitrator's continuing jurisdiction because she had "not been served with an award" on October 13, 2014, we hold that the objection was not well taken and that the arbitrator quite properly overruled/ignored it. First, if Meza truly believed that a "final written award" was due on September 14 (30 days after submission of the posthearing briefs), as she argued to the trial court and as she now argues on appeal, then she should have made that argument to the arbitrator and done so promptly—either immediately after receiving the arbitrator's August 5, 2014 order, which raised for the first time the October 13, 2014 deadline or immediately after September 14. Instead, she did neither. Because Meza did not act promptly as required by the Rules, because she sat on her rights, she waived any objection about a purported failure to issue a final award by September 14.

Second, even if Meza truly believed in the fall of 2014 that the arbitrator was obligated to issue a final written award by September 14 and promptly objected when no such award was issued by that date, any such belief was objectively unreasonable. Because Meza had agreed in May 2014 to bifurcate the arbitration, she knew long before September 14 that the first award issued by the arbitrator was going to be an interim award, not a final award, and therefore outside the Arbitration Agreement's 30-day requirement. Moreover, she knew or should have known that neither the Arbitration Agreement nor the Rules set a deadline or provide any other procedural guidance for the issuance of an interim award. Instead, the procedures related to the issuance of an interim award, as well as all other matters relating to the "conduct" of the Arbitration Hearing" are left to the arbitrator to decide and his decision on such matters are "final."

In addition, we hold that use of the CAA as the standard for review would not change the results here for two principal reasons. First, there is little difference between the FAA and the CAA. "In most important respects, the California statutory scheme on enforcement of private arbitration agreements is similar to the [FAA]." (*Rosenthal v. Great Western Fin. Securities Corp*. (1996) 14 Cal.4th 394, 406.) "The CAA, like the

FAA, provides that arbitration agreements are 'valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract.' [Citations.] This provision was intended 'to overcome an anachronistic judicial hostility to agreements to arbitrate, which American courts had borrowed from English common law.' [Citations.] [¶] Consistent with that purpose, the CAA and the FAA provide only limited grounds for judicial review of an arbitration award. Under both statutes, courts are authorized to vacate an award if it was (1) procured by corruption, fraud, or undue means; (2) issued by corrupt arbitrators; (3) affected by prejudicial misconduct on the part of the arbitrators; or (4) in excess of the arbitrators' powers." (*Cable Connection, Inc. v. DIRECTV, Inc*. (2008) 44 Cal.4th 1334, 1343–1344.) As discussed above, the issuance of the Interim and Final Awards was consistent with, not in excess of, the powers granted to the arbitrator under the Arbitration Agreement and the Rules.

Second, our holding is consistent with existing California case law giving great deference to an arbitrator's decisions with regard to procedural issues. For example, in *Greenspan v. LADT, LLC, supra*, 185 Cal.App.4th 1413, the arbitrator determined that under similar rules issued by JAMS (JAMS's Comprehensive Arbitration Rules and Procedures), he was permitted to issue a final award more than 30 days after issuing an interim award. (*Id*. at pp. 1449–1456.) The court, drawing on federal case law regarding the deference given to an arbitrator's decision about procedural issues, such as time limits, concluded that the arbitrator's interpretation and application of the JAMS rules was binding on the parties and beyond judicial review. (*Id*. at p. 1455.) Specifically, the court found the federal cases to be "persuasive," and, as a result, "defer[red] to the arbitrator's decision that the Rules permitted him to render the awards in the manner and on the date he chose." (*Ibid*.)

DISPOSITION

The judgment is affirmed. The Automobile Club of Southern California is to recover its costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.